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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,920	09/14/2000	Wilson Moya	MCA-474	9899

25182 7590 08/19/2002

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BEDFORD, MA 01730

EXAMINER

VO, HAI

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	09/661,920	MOYA, WILSON	
	Examiner	Art Unit	
	Hai Vo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-7,9 and 11-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-7,9,11,12 and 14-24 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 1, 8 and 10 have been cancelled in the amendment received on 06/25/2002.

Specification

2. The specification is objected because the term "porous" after "a", page 6, line 9 is duplicate and should be deleted.
3. The abstract of the disclosure is objected to because it contains more than one paragraph. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 2, 3, 9, 14-16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by FR 2 233 626 substantially as set forth in Paper no. 4.
6. Claims 2-4, 9, 11, 12, and 14-24 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 272 043 substantially as set forth in Paper no. 4.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2 233 626 substantially as set forth in Paper no. 4.
9. Claim 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2 233 626 or EP 272 043 substantially as set forth in Paper no. 4.

Allowable Subject Matter

10. Claim 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. None of the prior art teaches or suggests the patterned porous structure wherein the porous structure is formed of two or more layers and each of the layers have one or more arrears of porous material and one or more areas of non-porous material formed therein and the areas of the porous and non-porous material vary from layer to layer.

Response to Arguments

11. The specification objections in Paper no. 4 are maintained because no correction has been submitted.
12. The 102 art rejections over Yokoyama, FR 2 633 398, WO 96/32635, and Fernwood have been overcome by the present amendment and response.
13. The 103 art rejections over Yokoyama, Fernwood, and FR 2 633 398 have been overcome by the present amendment and response.
14. Applicant's arguments filed 05/23/2002 have been fully considered but they are not persuasive.

The art rejections over FR 233 626 are maintained because of the following reasons. First, the sampling instrument of FR'626 does meet all the limitations of structure as set forth in the claims (figure 2). The sampling instrument comprises a support 12, terminal porous surface 14A of the tooth 14, and a porous absorbent layer 5. Second, Applicant's argument that the sampling instrument cannot provide for the flow of fluid through its mass from one surface to other in the porous regions is not persuasive because figure 2 of FR'626 is designed to allow the blood serum to flow from porous surface 14A through the porous absorbent layer 5. Further, Applicant argues that FR'626 fails to teach or suggest the formation of areas of non-porous material in the sampling instrument. This is not found persuasive because the figure 3 of FR'626 shows that the absorbent zones 5A are separated by the non-porous zones 3A to prevent lateral flow from one absorbent zone to other.

The art rejections over EP 272 043 are maintained because of the following reasons. Applicant argues that EP'043 does not teach or suggest a membrane including a structure in one layer that has porous and non-porous regions in it. This is not found persuasive. The composite membrane of EP'043 does meet all the limitations of structure as set forth in the claims (figure 3). The composite membrane comprises a reaction layer 13, a sealing layer 15, a barrier layer 17 and a liquophobic zone 21 provided at the periphery of each well (figure 13). The examiner interprets that each of layers 13, 15 having the porous areas 13, 15 surrounded by a liquophobic zone which is analogous to non-porous areas.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Monday to Friday, 8:30 to 5:00 (EAST).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned

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are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV
August 11, 2002


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700